

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 94-0245 CS**

**Controlled Substance Excise Tax**

**For Tax Year: 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Controlled Substance Excise Tax – Imposition**

**Authority:** IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayers protest the imposition of the controlled substance excise tax.

**STATEMENT OF FACTS**

The taxpayer and her husband were arrested (husband's docket number 94-0245) January 14, 1994, by the Indiana State Police Department for possession of marijuana. The taxpayer and his wife were the subjects of a yearlong investigation in which the taxpayer sold marijuana to confidential informants on several occasions. This information is documented in the police reports contained in the taxpayer's file. The marijuana seized on the arrest date weighed 809.45 grams. Taxpayers were assessed the controlled substance excise tax on February 10, 1994.

**I. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

In Indiana, the manufacture, possession or delivery of marijuana is taxable under IC 6-7-3-5. The taxpayer had not paid the controlled substance excise tax ("CSET") on the marijuana that he possessed, so the Department assessed the tax against him and demanded payment.

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

At the hearing, the taxpayer argued that she did not possess the marijuana at issue. A review of the taxpayer's protest letter contradicts this position in that the taxpayer argues that she "did possess marijuana schedule I substance but same was with the knowledge and consent of a physician and therefore was not in violation of law." (Item 2 in protest letter dated February 24, 1994). The medicinal use of marijuana is not recognized under Indiana law.

The taxpayer has argued that the assessment should be waived because State's prosecutor successfully moved to dismiss the felony criminal charges of dealing marijuana. The dismissal of this charge has no relation to the assessment imposed by the Department. The taxpayer carries the burden of proving that she did not possess the marijuana in question. Neither the taxpayer's brief to the Department nor the memorandum in support of dismissing the charges make any claim that the taxpayer did not in fact possess the marijuana. Also, the taxpayer did not present any valid evidence at the hearing to overturn the burden.

### **FINDING**

Taxpayers' protest is denied.